

should permit longer workdays during critical seasons.

#### *Safety Advocacy Groups*

The AHAS determined that it could not support the agency's proposal to eliminate the NHS exemptions through use of the Type 5 driving category because the absence of an EOBR requirement would prevent adequate monitoring and enforcement. It argued that the substituted regime of a 78-hour week with only 32 hours off before the next week begins was excessive and that enforcement problems would allow even these liberal limits to be exceeded. In effect, AHAS said the agency would extend NHS-type exemptions to all construction operations, even beyond 50 miles, without sufficient opportunity for comment. The agency's approach to eliminating NHS exemptions appeared to deregulate construction and utility operations. Finally, the elimination of the Tolerance Guidelines as proposed in the NPRM would effectively require States to increase current driving limitations from 10 hours to 12.

The AHAS recommended that the agency treat construction and agricultural exemptions in a separate rulemaking, which would better conform to the requirements of the Administrative Procedure Act.

#### **FMCSA Response**

There are no data on fatigue that support either the 24-hour restart provisions for oilfield, construction, ground water, or utility carriers, or the total HOS exemption for agriculture provided by Sec. 345. The NPRM proposed modifying the 24-hour restart into a restart provision of between 32 and 56 hours, depending on when the period began. The agency cited data that did support a 32-hour restart provision. The agency's expert panel verified that data.

The NPRM gave AHAS the opportunity to present its case that modifications for the NHS exemptions were necessary. AHAS did not provide any data.

The NPRM treated the agricultural exemption narrowly, as the agency has done with all the NHS exemptions in interpretations and opinion letters since 1996. Congress did not define the terms for which FMCSA proposed definitions; the agency believes it must define the terms narrowly to maintain safety and prevent abuse. The FMCSA, however, will take no actions contrary to the statutes on the matter of NHS exemptions.

#### **Sleeper Berth Requirements**

The appropriate use of sleeper berths to obtain required rest and avoid the accumulation of sleep debt became an issue because of the NPRM finding that drivers need about ten consecutive hours within which to obtain the necessary seven to eight hours of daily sleep. The sleeper berth exception in the current rules allows a driver to accumulate the required eight (otherwise consecutive) hours off-duty in a sleeper berth (that meets the requirements of 49 CFR 393.76) in two periods totaling at least eight hours, neither period being less than two hours.

Studies on the sleeper berth issue have generally found that, for a number of reasons, sleeping in a berth, particularly when the vehicle is moving, is less restorative than sleeping in a bed. The agency has recently released a study begun after it developed the NPRM: Dingus, Neale, Garness, Hanowski, Keisler, Lee, Perez, Robinson, Belz, Casali, Pace-Schott, Stickgold, Hobson, (2002), *Impact of Sleeper Berth Usage on Driver Fatigue*, FMCSA Report No. FMCSA-RT-02-050. This study concludes that sleeping in a moving vehicle impairs the quality of rest. Some studies also have determined that drivers using sleeper berths had a higher crash risk than drivers obtaining their sleep in a bed. The agency's Expert Panel, who reviewed the feasible alternatives during development of the NPRM, recommended that until there was more definitive information available on the relative quality of sleep in a berth, drivers using sleeper berths should be afforded a greater opportunity to obtain additional rest. The FMCSA proposed that only team drivers be allowed to use sleeper berths to split their accumulated required off-duty time, and then only in periods of not less than five hours each. Single drivers would use the sleeper berth during one block of off-duty time.

A study by Abrams C., Shultz, T., & Wylie, C.D. (1997) *Commercial Motor Vehicle Driver Fatigue, Alertness, and Countermeasures Survey* indicated that drivers using sleeper berths reported averaging about six to seven hours at a stretch in the berths. Other industry surveys indicated that drivers reported averaging about four hours at a stretch in the sleeper berths. An ATA survey showed that only five percent of team drivers use the sleeper berth while the vehicle is in motion. An Owner Operators Independent Drivers Association (OOIDA) survey showed that number to be higher, 11 percent.

#### *Motor Carriers*

The industry proposed that drivers with conforming sleeper berths be permitted to split the required ten consecutive off-duty hours into two non-consecutive periods, the duration of each to be determined by the drivers. The industry believes that given the fact that the driver must accumulate 10 hours off duty in a 24-hour period, drivers ought to be able to determine the length of the two separate periods. The industry believes drivers are in the best position to know how much rest they need at a particular time. For example, the driver could combine one long sleep period of six or seven hours with one separate, shorter extended rest period of three or four hours to augment the longer sleep. The industry proposed that off-duty time taken immediately before or after a sleeper berth period may also be counted toward the accumulation of the required ten hours off duty. They stated that this merely carries over what is presently permitted under the existing rules, and affords the driver the flexibility to maximize sleep and rest time. Finally, the industry recommended that time spent in the passenger seat, presumably even while the vehicle is in motion under the control of a co-driver, be counted as off-duty time and be credited toward the accumulation of the required ten hours. This passenger-seat time would be subject to the restriction that it must immediately precede or follow sleeper berth time. The rationale is that a driver may need time merely to relax without sleeping before or after his sleep period.

Comments from industry were uniformly in favor of retaining the sleeper berth provision for all drivers, solo and team. The carrier associations, large and small, individual carriers, owner-operators, drivers and unions all found the proposal regarding sleeper berth use unreasonably restrictive. The larger carriers lined up behind the ATA recommendation, and the smaller carriers and the owner-operators sounded similar themes. In fact, the OOIDA questioned why sitting in a jump seat could not be combined with sleeper berth time to accumulate the required rest period. What difference is there, OOIDA asked, between a driver lying awake in a sleeper berth, who cannot sleep, and a driver sitting in the jump seat reading or listening to the radio?

The ATA argued that the proposed sleeper berth provision is inconsistent with available science. It stated that the FMCSA has acknowledged a gap in the current research on sleeper berths and that more research is required. ATA